84-625

Office-Supreme Court, U.S.
FILED
OCT 16 1984
ALEXANDER L. STEVAS,
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1984

No._____

SHARON GALE TAYLOR,

Petitioner,

v.

CALIFORNIA UNEMPLOYMENT
INSURANCE APPEALS BOARD,

Respondent.

SAN DIEGO STATE UNIVERSITY,

Real Party in Interest.

PETITION FOR A WRIT OF CERTIORARI FROM THE SUPREME COURT OF CALIFORNIA

[28 U.S.C. §1257(3)]

Brief for Petitioner

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In propria persona

13pp

QUESTIONS PRESENTED

I

DENIAL OF PROCEDURAL DUE PROCESS

1. May a trial court properly make an informed decision for review of an administrative decision when the entire administrative record was not on file with the Court at the time of hearing?
2. May a trial court render a decision consistent with traditional notions of fair play and substantial justice without Petitioner having been served a copy of or being given a right to see or contest what Respondent has submitted to the Court as the administrative record and upon which record the Court relies and bases its judgment thereby denying Petitioner a fair opportunity to be heard and present defenses?

II

DENIAL OF SUBSTANTIVE DUE PROCESS

3. May a state statute (California Un-

employment Insurance Code §1256) be enforced through means selected to deny Petitioner unemployment benefits for the assertion of Petitioner's vested fundamental constitutional right of privacy and allow the interpretation of said statute to violate the Supremacy Clause of the U.S. Constitution in derogation of Petitioner's constitutionally protected freedoms?

4. In order for Petitioner to have a showing of good cause for leaving her employment, must Petitioner shoulder the burden of proof showing there is no compelling state interest disallowing the exercise of Petitioner's constitutionally granted freedoms and thereby allowing Respondent to shift its burden to Petitioner and allowing Respondent to ignore its required test of showing a compelling state interest for the

denial of Petitioner's constitutional rights and subsequent denial of unemployment benefits?

5. Where there is no showing of a compelling state interest justifying the denial of the exercise of constitutional rights, can there be a justifiable refusal of unemployment benefits intended to protect citizens such as Petitioner from unemployment as provided for in California Unemployment Insurance Code §100?

6. Did the trial court err in upholding the decision of an administrative tribunal ("Respondent") when said tribunal determined facts in derogation of fundamental constitutional rights of Petitioner by terming the exercise of said constitutional rights as "personal and non-compelling and without good cause" as a means to deny Petitioner unemployment benefits when Petitioner's constitutional right of privacy had al-

ready been infringed upon by Petitioner's employer?

III

DENIAL OF EQUAL PROTECTION OF THE LAWS

7. Should it be necessary that Petitioner, an applicant for unemployment benefits, be required to prosecute to final judgment a civil case for violation of Petitioner's constitutional rights to a favorable conclusion before being entitled to unemployment benefits thereby placing Petitioner into a category that "if you leave your work based upon the assertion of your constitutional rights" you will be deemed to have voluntarily quit and ineligible for benefits as interpreted under Section 1256 of the California Unemployment Insurance Code?

8. Can a State court properly draw a conclusion that a civil complaint [See C. Tr. p. 29] filed against Petitioner's employer is not relevant, germane, or admissible evidence when said complaint

is inextricably intertwined and interlocked to the very reasons for Petitioner leaving the employment? Can the Court properly isolate the constitutional issues and ignore the complete picture regarding the denial of fundamental human and constitutional rights through independent interpretation of "good cause" under §1256 of the California Unemployment Insurance Code?

9. Did the trial court err in concluding that when Petitioner left her work for the protection of her life, health, safety, and liberty that such an action is "personal and non-compelling" so as to usurp her vested fundamental constitutional rights and then also deny Petitioner unemployment benefits?

   a. Can Petitioner rightfully be denied benefits because she should be compelled to continue in a job where:

      (i) Her life was being threatened;

      (ii) Petitioner without her know-

ledge was being made a party to an illegal conspiracy;

(iii) Petitioner was intimidated and threatened by University officials for raising issues of constitutional violations;

(iv) When the employer, SDSU, has demonstrated a cavalier disregard for employee Petitioner's health, safety, life, liberty, and peace of mind by placing Petitioner in a dangerous situation;

(v) When Petitioner's own physician tells Petitioner to leave the work to protect her own health and safety?

CERTIFICATION AS TO INTERESTED PARTIES

The undersigned Petitioner certifies that the following listed parties have an interest in the outcome of this case. These representations are made to enable justices of the Court to evaluate possible disqualifications or refusal.

There are no other interested parties other than those named in the caption of this case and their attorneys of record.

By: Sharon Gale Taylor
Sharon Gale Taylor, Petitioner
In propria persona

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The Petitioner, Sharon Gale Taylor, respectfully prays that a Writ of Certiorari issue to review the judgment in this proceeding of the California Supreme Court on July 18, 1984.

Petitioner respectfully prays that the Court will not just look to the form of this Petition but will pierce through to the substance of the issues employing all the legal wisdom and insight of the highest court of the land to see that the law, equity, and justice are served.

OPINIONS BELOW

The denial of the California Supreme Court for a hearing is reported in Appendix A hereto. The opinions of the California Court of Appeal, Fourth Appellate District, Division One; Partial Transcript of the Writ of Mandate Hearing in the Superior Court of California; and the Opinion issued by the California Administrative Law Judge appear hereto as Appendices B, C, & D, respectively.

JURISDICTION

The grounds on which the jurisdiction of the Court is invoked are the violations of procedural and substantive due process as well as denial of Petitioner's vested fundamental constitutional rights through the invasion of Petitioner's right of privacy. Further Petitioner seeks to challenge the validity of the application of California Unemployment Insurance Code §1256 in the instant case only on the grounds that it is being repugnant to the rights, privileges and immunities granted to Petitioner under the U.S. Constitution, and is conflict with the public policy power of the Legislature under California Unemployment Insurance Code §100 for which the system was established.

The nature of the proceeding below is that at every stage of the proceedings Petitioner has raised the issue of violation of her vested fundamental constitutional rights and denial of due process. In each instance, the derogation of these

rights has been summarily dismissed. The issue of all the evidence not being before the Court was raised by Petitioner at all levels and the oral and written argument before the Appellate Court and in this case in its entirety will verify this. However, the opinion of the Appellate Court is completely devoid of any mention as to the missing record being properly before the trial court or Petitioner being given a fair opportunity to be heard and present defenses. A mere recital in the appellate opinion that the matter is being brought for the fifth time does not support the law has been correctly applied or that there has been a fair hearing when errors have been committed ab initio.

A petition for hearing was filed in the California Supreme Court on June 8, 1984. A hearing in the California Supreme Court was denied on July 18, 1984. The judgment Petitioner seeks to have reviewed is filed April 17, 1984. This Writ of Certiorari

is filed within 90 days of denial of the hearing by the California Supreme Court.

The jurisdiction of this Court is invoked under Section 1257(3) of Title 28 of the United States Code.

The following cases sustain jurisdiction: The refusal of the highest state court to review a decision of a lower court may be considered an approval of the conclusion reached by the lower court and is, in effect, an affirmance of the lower court's judgment. [Minneapolis, St. P. & S. Ste. M.R.Co. v. Rock (1929) 279 U.S. 410, 412, 49 S.Ct. 363, 73 L.Ed. 766; see also Gotthilf v. Sills (1963) 375 U.S. 79, 79-80, 84 S.Ct. 187, 11 L.Ed2d 159; Prudential Ins. Co. v. Cheek (1922) 259 U.S. 530, 533-534, 42 S.Ct. 516, 66 L.Ed. 1044].

Therefore, the denial of a hearing by the California Supreme Court exhausts the California remedies and the case may be properly reviewed by the United States Supreme Court. [Douglas v. California (1963) 372 U.S. 353, 354 fn 1, 83 S.Ct. 814, 9 L.Ed2d 811

(certiorari)].

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions in this case are the Ninth and Fourteenth Amendments to the Constitution of the United States, Article 6 of the U.S. Constitution, Article 1 §§1, 3, 13 of the California Constitution. The statutes involved are Sections 100, 1256 of the California Unemployment Insurance Code. These provisions are set forth in Appendix E. Other notable authorities not recited verbatim in Appendix E due to length are: Federal Privacy Act of 1974 [P.L. 93-579]; the Administrative Procedures Act of 5 USCS §552(b)(3), (6), (7); and Government Code §§6254(c), (f), (k); 6255 of the California Public Records Act.

STATEMENT OF THE CASE

This action was an appeal brought by Petitioner, SHARON GALE TAYLOR, against her employer, SAN DIEGO STATE UNIVERSITY ("SDSU"), Real Party in Interest, and the Respondent,

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD ("CUIAB") for nonpayment of unemployment benefits.

Petitioner was employed as a full-time Department Secretary for a period of over seven (7) years with "SDSU". Petitioner was injured during her employment by a student enrolled in the University with a history of mental health problems and at the time under psychiatric care through "SDSU" Health Services.

Petitioner's report of her work injuries was placed in the psychiatric file of the student. The student was removed from the University for "health reasons". Outraged by her removal from the University, the student gained access to her medical file containing privileged information with respect to Petitioner. The student became outraged with a statement recorded as purportedly being made by Petitioner that the student "attacked her". The student began threatening Petitioner's life and was outraged with Petitioner. It is important to note that Petitioner had already been injured

on two prior occasions by the student.

This is a severely concise statement of the facts. Details are set forth in Petitioner's Opening Brief before the Appellate Court and other written testimony of the case in its entirety. This short statement is not intended to alter previous statements submitted but rather to meet the brevity requirements of the Court.

Petitioner filed suit in San Diego Superior Court for a Writ of Mandate and also filed suit in the San Diego County Superior Court for invasion of privacy, etc.

The Writ of Mandate Hearing in the Reporter's Transcript (Appendix C) conceded a fundamental right was involved but ruled in favor of the Respondent. On appeal, the Fourth Appellate District affirmed the lower court decision and held that the constitutional issues raised by Petitioner were meritless because Petitioner voluntarily quit her job without good cause as interpreted under Section 1256. The Court did not address the issue raised by Petitioner that the ad-

ministrative record was not properly before the trial court.

HISTORY OF THIS LITIGATION

On August 9, 1981, Petitioner applied for unemployment benefits. On September 10, 1981, Employment Development Department ("EDD") denied Petitioner's application for benefits on the ground that Petitioner left her most recent employment without good cause and was, therefore, not entitled to benefits by reason of Unemployment Insurance Code §1256. (Admin. Record, Notice of Determination.)

Petitioner timely appealed the decision of the Department on September 24, 1981. (Admin. Record, Appeal to ALJ). Thereafter, on October 27, 1981, a hearing was held before the Honorable S.M. Woolf. (Admin. Record, Tr. of Hg.) On November 2, 1981, the ALJ issued his decision affirming the denial of benefits by the Department. (Appendix D)

Petitioner filed a timely appeal of the decision of the ALJ to Respondent on November 22, 1981. Thereafter, on March 11,

1982, Respondent wrote Petitioner that according to Section 410 of the California Unemployment Insurance Code that:

> "A decision of the appeals board is final, except for such action as may be taken by a judicial tribunal as permitted or required by law."

Petitioner filed a Writ of Mandate on August 18, 1982 and was granted a Stay Order suspending the decision of the Administrative Law Judge pending further order of the court in Superior Court Case No. 477223 ...and then and there show cause why the stay should not be continued pending the judgment in the above-entitled proceeding and until a notice of appeal from the judgment has been filed or until the time for filing such notice has expired. The matter came before a hearing on October 27, 1982, wherein the Petition for Writ of Mandate was denied and the Stay Order dissolved. On November 29, 1982, a Notice of Appeal was filed and on April 6, 1983, Petitioner filed an Application and Order for Extension of Time to Serve and File Brief, which was granted by the

Appellate Court extending the time to file said brief until June 11, 1983. The Appellate Court affirmed the judgment of the trial court and the opinion was filed April 17, 1984. On June 8, 1984, the Petition for Hearing submitted by Petitioner was filed by the California Supreme Court. On July 20, 1984, Petitioner received a copy of Remittitur to County Clerk from the Court of Appeal - State of California, Fourth Appellate District. On July 18, 1984, Petitioner received a postcard saying hearing denied, Clerk's Office, Supreme Court. The instant writ ensued.

CURRENT LITIGATION

Petitioner has been on file in the San Diego Superior Court Case No. 477223 since October 22, 1981. An Amended Complaint for Damages filed May 17, 1982 for Invasion of Privacy, Breach of Contract, Conspiracy, and Negligence--Failure to Discharge Mandatory Duty was filed.

SUBSTANTIALITY OF FEDERAL QUESTIONS AND REASONS FOR GRANTING THE WRIT

The due process claims with regard to

to the missing administrative record in the court file, which was supposed to be supplied by the government (Respondent) goes to the heart of whether or not Petitioner has received a fair trial. Even though this claim was raised at the Appellate level, the opinion is devoid of any mention or resolution of this issue. It was discussed openly in court and Respondent said he filed it the day of the hearing but offered no proof of the filing and the justices did not pursue it. Respondent said, "I must have it here somewhere." It should be noted that if indeed Respondent supplied the court with the administrative record the day of the hearing, then it would be virtually impossible for the judge to review it when he just got it at the hearing.

The Court in this case needs to determine the value of preserving constitutional freedoms v. the economic cost to society (such as an unemployment system) to enforce the protection of constitutional freedoms

guaranteed to Petitioner under the U.S. Constitution.

This is a case where economic benefits for which Petitioner, as a citizen of the State of California was taxed (unemployment benefits), were denied for the assertion of Petitioner's constitutional rights and for which summary adjudication in an administrative tribunal lacks subject matter jurisdiction to make a determination of constitutional violations. This in turn lead to a usurpation of constitutionally protected freedoms compounded by the denial of unemployment benefits to the economic harm of Petitioner as a member of a protected class under Section 100 of the California Unemployment Insurance Code who became involuntarily unemployed by her refusal to sacrifice her constitutional rights protected by the U.S. Constitution under the Supremacy Clause.

It is unjust for a state to tax its citizens to support an unemployment system and then deny them benefits for the very purpose for which the legislation was enacted.

In 1984 in an information society such as ours with high technological advances in information gathering, the importance of deciding the privacy issue for Petitioner and all individuals with respect to persons with mental health problems gaining access to information recorded about them cannot be overlooked. As Orwell predicted, it is a time unless kept in check by the judiciary that the government can become oppressive to the citizens of a free and democratic society.

When persons are allowed access to protected information, whether it be for a right to be let alone (privacy issue) or other reasons, the society can no longer guarantee a Bill of Rights to its citizens. Therefore, I beg the Court to see that this privacy issue is ripe for determination. It is unthinkable to Petitioner that an economic cost such an unemployment benefits should weigh more than the constitutional freedoms guaranteed by the U.S. Constitution, however, this case is a case in point.

Lastly, the rights of victims of crime and victims suffering injury from mentally ill persons are issues ripe for determination by this Court. Although a different case, our own President of the United States was a victim suffering injury at the hands of a mentally ill person. Perhaps information should not have been disclosed as to his whereabouts.

Petitioner left her work because her life was being threatened by a mentally ill person provoked through disclosure of protected information about Petitioner's report of her work injuries to a governmental agency, which was protected information not to be disclosed to a psychiatric patient under the Federal Privacy Act of 1974 [P.L. 93-579]; the Administrative Procedures Act of 5 USCS §552(b)(3),(6),(7); and Government Code §§6254(c),(f),(k); 6255 of the California Public Records Act.

Just as the First Amendment of the U.S. Constitution secures the right of citizens

to a right of freedom of association, it must also secure the freedom of the right to "not associate" with an employer (a governmental agency) which has violated Petitioner's constitutional rights in direct contravention to the law.

ARGUMENT

I

DENIAL OF PROCEDURAL DUE PROCESS

A Petitioner seeking relief for denial of procedural due process must establish four elements to state a claim. Facts must be alleged which, if proven, demonstrate that a person (1) had a protectable right; (2) was not given notice of the proposed action; (3) was not given an adequate opportunity to be heard and present defenses; (4) and that the deprivation was caused by state action.

In the instant case, Petitioner had a protectable right to have all the evidence before the court so that it could make an informed decision. Petitioner personally checked the file after the Writ of Mandate

Hearing and the administrative record was not a part of that file. Respondent was to have supplied the record to the court. However, Respondent never sent Petitioner a copy of what he submitted to the Court. When asked about this, Respondent said he lodged it with the court the day of the hearing.

This last statement demonstrates that procedurally Petitioner was denied adequate opportunity and notice to challenge or review what had been submitted to the court. The Respondent in this instance is an arm of the California State Government appointed by the Legislature--its power is derived from the government, therefore, the deprivation stemmed from state action.

If in fact the record was not before the court, then there could not have been an adequate determination and weighing of the evidence. Due process is not interested in mere technical formalism. Substance is determinative of whether due process has been afforded. The more important the rights at stake, the more important must be

the procedural safeguards surrounding those rights. Cafeteria & Restaurant Workers Union v. McElroy (1961) 367 U.S. 886, 895 [6 L.Ed.2d 1230, 81 S.Ct. 1743].

Further, jurisdiction is constitutionally mandated and may not be delegated without statutory authority. The unemployment compensation appeals board is a statutory statewide administrative body which does not have constitutional authority to make final determinations of fact. Cooperman v. CUIAB (1975) 122 Cal.Rptr. 127, 49 Cal.3d 1.

This becomes increasingly important in light of the fact that if the administrative record was not before the court, then how is it feasible to uphold any determinations of fact by that lower administrative agency when the court has not reviewed whether or not the agency had proper authority to make those determinations of fact. This issue alone needs to be investigated--the missing record, which was to have been supplied by the government.

Further, Petitioner challenges the authority of the Administrative Law Judge to make a determination that constitutional issues raised by Petitioner are not germane to a determination of a right to unemployment benefits. Jurisdiction is constitutionally mandated and may not be delegated without statutory authority. Lack of jurisdiction in its fundamental sense means absence of power to hear or determine the case. That is, an absence of authority over the subject matter or the parties. A court has no jurisdiction to hear or determine a case where the type of proceeding or subject matter is beyond the jurisdiction defined for that Court by statute or constitutional provision. Abelleira v. District Court of Appeal (1941) 17 Cal.2d 280, 287-288, 109 P.2d 942.

II

DENIAL OF SUBSTANTIVE DUE PROCESS

A Petitioner seeking relief for denial of substantive due process must establish that the legislation in question is unreasonable. The factors to be considered

are (i) is the purpose of the statute a proper subject matter for the exercise of the legislative power? (ii) Do the means selected by the legislature have a real and substantial relation to the purpose sought to be accomplished? (iii) To what extent does the statute impair any constitutionally protected right? Here the extent the right is impaired is balanced against the public interest which is sought to be advanced, and (iv) If it is state legislation, does it violate the Supremacy Clause?

Petitioner does not seek to argue that California Unemployment Insurance Code §1256 is not a proper subject matter for the exercise of the legislative power. It is. The state has a vested interest in discouraging workers from purposefully seeking unemployment.

However, the means selected are in question in that independent definition of "what constitutes good cause" by an administrative official is too subjective and

left open to abusive interpretation. The statute is completely silent as to whether the assertion of vested constitutional rights is sufficient to constitute good cause because of the public interest in preserving constitutional rights. Therefore, it is feasible to argue that because there are no definitional guidelines with respect to constitutional right infringement cases that Petitioner and others are being denied an economic benefit when they need it most and are having to seek ancillary legal action to prove the justification of their assertion of their constitutional rights. Not to mention that it is virtually impossible to seek other legal action when you have no money. Therefore, it becomes necessary for one to either prosecute their own case in forma pauperis (as this case was earlier in its existence) or just give up and surrender.

The only other alternative for Petitioner would have been to surrender the exercise of her constitutional rights and live with the

constitutional violations thrust upon her by her employer. However, Petitioner happens to be one of those individuals that does believe that the Constitution is a living document and not just a bunch of words written on paper several hundred years ago.

It is important to remember that if one must sacrifice their constitutional rights with the threat that they will not be granted unemployment benefits, then this does not put Petitioner or anyone else for that matter as the owner of their constitutional rights. Rather, it allows the government to dictate--he who controls the purse determines what rights are exercised or acknowledged.

This clearly is violative of the Supremacy Clause of the U.S. Constitution, which assures to all the protection of the laws and the Bill of Rights. The public interest is better served by protecting the constitutional rights of its citizenry, otherwise the only other alternative is oppression.

III

DENIAL OF EQUAL PROTECTION OF THE LAWS AND DENIAL OF RIGHT OF PRIVACY

The three elements that are essential to a cause of action for violation of the right of privacy by "intrusion" according to Dean Prosser are: (1) something in the nature of a prying or intrusion; (2) that the intrusion was of such a character as would be offensive or objectionable to a reasonable man; and (3) that the place or thing intruded was private and was entitled to be private. [Prosser, Law of Torts (3d Ed. 1964), §112, p. 833; Prosser, "Privacy," 48 Calif. L. Rev. 383, 390-391 (1960)].

It is well settled law that a government may not withhold benefits on condition that the prospective recipient surrender his constitutional rights.

The California Unemployment Insurance Program, although financed partly by a payroll tax on employers, is in fact a State

benefit system, and the State of California, unlike a private employer, is subject to the proscriptions of the Fourteenth Amendment. McCrae v. California Unemployment Insurance Appeals Board 30 Cal.App.3d 89; 106 Cal.Rptr. 159, 162 (1973).

In the instant case, the intrusion was the fact that SDSU disclosed private, privileged information about Petitioner to a mentally ill person from a medical file after having removed said student from the University. Under the privacy laws of the United States and California government codes cited in Appendix E, it is clear that the file was entitled to be private and that the information should never have been disclosed in the first place. This compounds the injury by the fact that Petitioner was then placed in a dangerous situation wherein the student began threatening Petitioner's life.

"The right to pursue and obtain happiness is guaranteed to all by the fundamental law of our state. This right

by its very nature includes the right to live free from the unwarranted attack of others upon one's liberty, property, and reputation. Melvin v. Reid (1931) 112 Cal.App. 285, 289, 297 P. 91. It stands for the right to be "let alone." Petitioner asked several times to be let alone and did not want anything recorded with respect to her being disclosed to the student. However, this is not what occurred.

Petitioner asks that the court read her Opening Brief to the Appellate Court in which the law is expounded on in more detail. Due to space limitations, it is difficult to be as thorough as I would like to be.

CONCLUSION

This is an oppressive situation of the individual battling against the mighty State and the attitude that the sovereign can do no wrong. This is an appeal to law, justice, and equity for Petitioner and all citizens in a free society to be free from

the heavy-handed actions of government to force upright citizens such as Petitioner into destitution and poverty to fight for principles and constitutionally-granted freedoms at a time when one is most vulnerable.

For the foregoing reasons, it is respectfully requested that the court give due consideration to the issues raised by Petitioner; that the decision of the California Supreme Court be reversed; that Petitioner be awarded unemployment benefits from the date of application (August, 1981) to when she began work in October, 1981. Further, Petitioner begs that she not be required to bear any attorneys' fees for the government at any time and overturn the July 20, 1984 statement that Repondent be awarded costs which was not mentioned by the Justices or their opinion rendered in the Appellate Court.

In conclusion, it is important that the spirit of the law be followed and that the Court also remedy the misapplications of the law in this case. If successful, Petitioner requests that Respondents bear all filing fees for Petitioner and costs of duplication. Petitioner requests argument.

DATED: 10/14/84 Respectfully submitted,

Sharon Gale Taylor

Sharon Gale Taylor,
Petitioner, In propria persona

VERIFICATION

I, SHARON GALE TAYLOR, am the Petitioner in the entitled action. I have read the foregoing Petition and know the contents thereof. The same is true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the

foregoing is true and correct and that this declaration is executed on October 14, 1984, at San Diego, California.

Sharon Gale Taylor

Sharon Gale Taylor,
Petitioner, In
propria persona

APPENDICES

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APPENDIX A

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUL 18 1984

I have this day filed Order _____

HEARING DENIED

In re: 4 Civil *No.* 28523

Taylor

vs.

Unemployment Ins. App Bd

Respectfully,

Clerk

-877 8-82 4M * OSP

BEST AVAILABLE COPY

APPENDIX B

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE

STATE OF CALIFORNIA

SHARON GALE TAYLOR, Appellant, v. CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, Respondent. SAN DIEGO STATE UNIVERSITY, Real Party in Interest.	FILED APRIL 17, 1984 KEENAN G. CASADY, Clerk D000680 R Civ. No. 28523 (Super. Ct. No. 490751)

Appeal from a judgment of the Superior Court of San Diego County, Edward T. Butler, Judge. Affirmed.

Sharon Taylor appeals a judgment denying her petition for writ of mandate against the California Unemployment Insurance Appeals Board.

In November 1980 Taylor left her secretarial job at San Diego State Univer-

sity and never returned to work. Taylor applied for unemployment insurance compensation benefits. The Employment Development Department denied Taylor's application finding she was not entitled to unemployment benefits because she left her University job without good cause (Unemployment Ins. Code, §1256). After an evidentiary hearing, an administrative law judge affirmed the Department's decision denying Taylor benefits. Taylor appealed to the Board. After independently reviewing the administrative record, the Board affirmed the administrative law judge's decision.

Taylor petitioned the superior court for mandate, alleging she was entitled to unemployment benefits because she left her job after the University violated her constitutional rights to privacy. Taylor also asserted the Board should have admitted into evidence her civil complaint against the University for invasion of privacy, breach of contract, conspiracy and negligent failure

to discharge statutory duties. Taylor asked the court to stay the Board's decision pending judgment in her lawsuit against the University. After hearing the court denied mandate and Taylor appeals, bringing the matter for decision for the fifth time.

Under Unemployment Insurance Code section 1256, an employee leaving her most recent work voluntarily without good cause is disqualified for unemployment benefits. Good cause means such cause as

> "justifies an employee's voluntarily leaving the ranks of the employed; the quitting must be for such a cause as would, in a similar situation, reasonably motivate the average able-bodied and qualified worker to give up his or her employment with its certain wage rewards in order to enter the ranks of the unemployed." (Evenson v. Unemployment Ins. Appeals Bd., 62 Cal.App.3d 1005, 1016.)

Taylor contends she had good cause to leave her University job because she feared the University would not protect her from a threatening student, Delores Castillo. Taylor asserts the University created a dangerous condition by improperly disclosing to Castillo a statement purportedly made by Taylor about Castillo attacking her when,

in fact, Taylor made no such statement. In finding Taylor left her job without good cause the Board said although Taylor

> "may have subjectively believed she continued to be in real danger at the hands of the student, it cannot be found, in light of the several measures taken by the employer, that a reasonable person would have abandoned her employment for that reason."

The records shows even if the University in some manner created a dangerous condition the University immediately took reasonable steps to relieve such condition and protect Taylor by locking doors, installing an alarm system, alerting co-workers to be vigilant and offering to move Taylor's work area to an inner office behind two locked doors. Despite such efforts by the University, Taylor did not return to work; indeed, Taylor admitted she left her job in November 1980 without intending to return to work no matter what the University did. Under these circumstances the Board properly found in

quitting her job Taylor did not act as a reasonably prudent person genuinely desiring to retain employment.

Taylor meritlessly contends the court should have ordered the Board to admit into evidence her civil complaint against the University. Admitting such complaint into evidence at the administrative hearing would have added nothing. Taylor's complaint essentially alleges the University invaded her privacy by improperly disclosing to Castillo a statement Taylor never made about Castillo attacking her. The record shows Taylor made identical allegations at the administrative hearing. Indeed, in her verified peition for mandate, Taylor specifically alleged she asserted at the administrative hearing her claims the University violated her privacy and breached its statutory duties.

Asserting the Board's denying her claim for unemployment benefits effectively precludes a fair trial in her lawsuit against

the University, Taylor meritlessly contends the court should have stayed the Board's decision pending resolution of such lawsuit. Taylor is free to prosecute her lawsuit despite the Board's denying her unemployment benefits. The issue in Taylor's lawsuit against the University is whether the University committed acts constituting misconduct violating Taylor's constitutional rights and entitling her to damages. The issue before the Board was whether Taylor acted reasonably in quitting her job despite such asserted University misconduct; indeed, in her opening brief Taylor admits "[t]he issue is whether Appellant voluntarily left her work without good cause." Even if Taylor were to prevail in her lawsuit, she will not be entitled to unemployment benefits because she unreasonably quit her job.

Taylor meritlessly contends the University terminated her for exercising her constitutional rights and the Board

acted improperly in withholding unemployment benefits because she did not surrender such rights. The record shows Taylor quit; the University did not fire her. The Board denied Taylor unemployment benefits not because she asserted constitutional rights against the University but rather because she left her job without good cause. Taylor has no constitutional or statutory right to unemployment benefits after quitting her job without good cause.

The Board properly found Taylor was not entitled to unemployment benefits. The court correctly denied mandate.

The judgment is affirmed.

BROWN, P.J.

WE CONCUR:

STANIFORTH, J.

WORK, J.

APPENDIX C

THE SUPERIOR COURT OF CALIFORNIA

FOR SAN DIEGO COUNTY

DEPARTMENT NO. 12 HON. EDWARD T. BUTLER, JUDGE

SHARON GALE TAYLOR, Petitioner, vs. CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, Respondent.	)	No. 490751 DATED February 14, 1983

REPORTER's PARTIAL TRANSCRIPT

Parts of the Proceedings on October 27, 1982

APPEARANCES:

For Petitioner: SHARON GALE TAYLOR, in Propria Persona
P.O. Box 1443
San Diego, CA 92112

For Respondent: JOHN H. SANDERS,
Deputy Attorney General
110 West A Street,
Suite 700
San Diego, CA 92101

SAN DIEGO, CALIFORNIA, WEDNESDAY, OCTOBER 27, 1982, 3:56 PM

THE COURT: Item 10, Taylor vs. California Unemployment Insurance Appeals Board.

MR. SANDERS: John H. Sanders for the respondent, UIAB.

MS. TAYLOR: And I am Sharon Gale Taylor.

THE COURT: Miss Taylor, I have gone through your writ of mandate, the Administrative Record Proceedings, and the entire file here, and it is my conclusion, tentatively, to deny the writ of mandate, and I do that because the civil lawsuit that you seem to have filed in connection with the matters about which you were concerned with before the California Unemployment Insurance Board, as I understand your argument, you are principally concerned over the Administrative Law Judge considering that the allegations in the Complaint, and otherwise, were not germane to the unemployment insurance action, and that the unemployment insurance people should have abated their action pending

the outcome of the civil action.

I don't believe that the issues in the civil lawsuit and the issues before the Unemployment Insurance Board are identical, nor do I think that either one constitute res judicata, or collateral estoppel, or the law of the case, which is to say, the Unemployment Insurance Board proceeding proceeds under its own authority, and under its own rules, and under its own regulations, and under its own evidentiary procedures. And, in any event, as I read the record, all of the issues involved in the civil lawsuit were in front of the Administrative Law Judge anyway, and he determined that you had no good cause to leave your job, and you did so voluntarily.

MS. TAYLOR: Is it my turn?

THE COURT: It is.

MS. TAYLOR: Okay. All right, my major contention is that the Administrative Law Judge exceeded his jurisdiction since the civil action is directly related to my

leaving my employment***

(Discussion not reported)

THE COURT: This is a petition for a writ of mandate brought under Code of Civil Procedure 1094.5, that spells out in very articulate form the allegations in the Complaints of the petitioner with respect to the hearing before the Administrative Law Judge, and the affirmance by the California Unemployment Insurance Appeals Board of the decision of that Law Judge.

The Attorney General concedes, as he must, that this is a fundamental vested right that has been involved, and, accordingly, under the law, I am required to exercise my own independent judgment on the evidence.

Now, 1094.5 points out that the inquiry in this case extends to questions of whether the respondent has proceeded without or in excess of jurisdiction, whether there was a fair trial, and whether there was any prejudicial abuse of discretion.

An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

As indicated here -- and this is a case in which the court is authorized by law to exercise its independent judgment on the evidence -- I have exercised my independent judgment on the evidence, and have reviewed the evidence thoroughly. I do not find an abuse of discretion because I find that the findings are supported by the weight of the evidence.

I have considered the matter of the exclusion by the Administrative Law Judge of the Complaint which was proffered in evidence; and by "Complaint," I mean an Amended Complaint for damages filed in this court, case No. 477223, Sharon Gale Taylor, Plaintiff, vs. State of California, et al. It is my conclusion that the Administrative Law Judge exercised his discretion properly

in holding that the Amended Complaint for damages was not relevant to the issues before him. And, further, that the ruling of the Administrative Law Judge, as affirmed by the Unemployment Insurance Appeals Board, is not a res judicata with respect to the issues set out in the Amended Complaint for damages. Indeed, the record is complete, to the effect that before the Administrative Law Judge was placed allegations that are set out in the Complaint concerning the invasion of privacy. However, to be sure that the matter has been carefully considered, and under subdivision "e" of 1094.5, the Amended Complaint for damages having been attached to the petition for the writ of mandate, and I, having already read that in connection with my review of the case, I do admit into evidence at this hearing that Complaint. And having so admitted that Complaint -- and I do it, not by formal admission into evidence by way of a Court Exhibit, but by taking

judicial notice of the Complaint as attached to the petition for writ of mandate -- I, too, concur with the Administrative Law Judge that the Amended Complaint for damages was not relevant, no admissible. And, accordingly, having reviewed the matter in this light, I do deny the petition for the writ of mandate, and instruct the Attorney General to prepare the appropriate documentation to reflect the decision.

MR. SANDERS: Thank you, your Honor.

THE CLERK: Notice?

THE COURT: And the Attorney General will give notice. And we are in recess.

MR. SANDERS: Thank you, your Honor.

THE CLERK: And the Stay Order is denied, also?

THE COURT: The Stay Order is denied.

THE CLERK: Thank you.

MR. SANDERS: Your Honor, there was a stay issued at the time of the temporary restraining order. We requested that that be dissolved. It may by law be dissolved

at the time of --

THE COURT: It is dissolved.

MS. TAYLOR: Your Honor?

(Conclusion of proceedings in the Taylor matter, and recess 4:23 pm)

COUNTY OF SAN DIEGO)
) ss:
STATE OF CALIFORNIA)

I, GEORGE TURLEY, an official reporter of the Superior Court of California, for San Diego County, hereby certify that the foregoing pages numbered 1 through 4, comprise a full, true, and correct transcript of my Stenograph notes of proceedings on October 27, 1982, in the matter of Taylor vs. Calif. Unemployment Insurance Appeals Board, No. 490751.

DATED at San Diego, California, this 14th day of February, 1983.

CSR, 847

APPENDIX D

DECISION OF THE ADMINISTRATIVE LAW JUDGE

In the Matter of:	Case No. SD-20048 Office of Appeals San Diego
Sharon Gale Taylor P.O. Box 1443 San Diego, CA 92112	Date Appeal Filed: September 24, 1981
Claimant-Appellant SSA No. 552 92 6296	Date & Place of Hearing:October 27, 1981, San Diego, CA
San Diego State University Office of Personnel Services Business & Financial Affairs San Diego, CA 92182	
Employer	
Account No. 540 0053	

STATEMENT OF FACTS

The claimant appealed a determination that she was disqualified for benefits beginning November 2, 1980 because she had voluntarily left her most recent work without good cause. A ruling was erroneously issued to the employer, although it has no reserve account.

The claimant had worked for the employer more than seven years. When the work ended, she was a secretary in the drama

department earning $13.54 per month. On October 8, 1980 a student sought some advice from the claimant and the claimant responded. The student had a history of mental problems and in appreciation for the advice given her by the claimant, she approached the claimant and gave her a rather forceful hug. The claimant is of small stature and the student was rather large. The incident resulted in some injury to the claimant's trapezius area.

About two days later the claimant was further injured in trying to catch a file drawer which had fallen. She was retroactively granted Workers Compensation temporary disability benefits beginning October 13, 1980.

As a matter of routine the claimant reported the incident concerning the student to her supervisor. She stressed, however, that the student had meant no harm and she did not want any action detrimental to the student to be taken.

The claimant believed that the university wished to expel the student and was searching for a valid reason for doing so. Apparently, the student was notified of her expulsion about November 7, 1981. She was told she was being expelled for reasons of health.

According to the claimant the student went to the health department and was permitted to review her medical file. Therein it was stated that the claimant had reported an "attack" by the student.

The student apparently became very upset with the claimant and sent her several bizarre notes and made a telephone call to her. In the telephone call, the student stated that she and the claimant would play a scene. The student would be Queen Elizabeth and the claimant would be Mary, Queen of Scots, and the student would kill the claimant.

The claimant became so emotionally upset as a result of these events that she absented herself from her duties for a period of time. A meeting was scheduled

on or about November 14, 1980 to be attended by the claimant and several officials of the university. The claimant's version of that meeting is that she was browbeat and intimidated and threatened with being terminated for being absent without leave if she did not immediately return to her duties.

However, the meeting was followed by a letter from the dean of the college of professional studies and fine arts addressed to the claimant on Monday, November 17, 1980. In the letter the dean expressed his regret over the claimant's problems and told her that she would be placed in an absent without leave status as of that date unless she could produce confirmation from a medical doctor that she was unable to work.

The claimant's disability for Workers Compensation purposes had not then been established and the claimant had decided after the meeting on November 14 that she would, under no circumstances, return to

work for the employer because of what she perceived to be her mistreatment in the course of meeting and her fear of injury at the hands of the student.

The employer had taken several steps to insure the safety of the claimant, such as moving her desk closer to the office of the head of the drama department, the devising of a telephone signal so that he could immediately respond to any call from the claimant and the undertaking by the head of the drama department to extend his hours at work so that he would be present at all times when the claimant was working.

Although the claimant has been placed on a one-year unpaid leave of absence from February 1981 to February 1982 in order to protect her insurance coverage and her right to return to work on 30 days notice to the employer, the claimant has not changed her position which she reached on November 14 that she would not return to the work.

REASONS FOR THE DECISION

Section 1256 of the Unemployment Insurance Code provides that an individual is disqualified for benefits if she has voluntarily left her most recent work without good cause.

In Precedent Decision P-B-27, the Appeals Board held there is good cause for the voluntary leaving of work where the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining her employment to take similar action.

Although the claimant was subsequently placed on temporary disability retroactively to October 13, the condition of her health was not a reason for her leaving the work. It is true that she had absented herself following her last day of work on November 7 for health reasons but her testimony is to the effect that the two reasons which prompted her to reach her decision not to return to work following the November 14

meeting were her fear of additional harm at the hands of the student involved and what she considered to be the overbearing treatment by university officials in the course of the November 14 meeting.

It is found that reasonable steps had been taken by the employer to assure the claimant's safety and, in any event, the claimant had the option of furnishing medical evidence of the necessity for a continuing absence if she wished to remain in the work. She did not do so because she believed she had been mistreated during the course of the meeting.

The claimant had been absent for several days without having presented medical evidence of the necessity therefor. It was not unreasonable for the employer to give an ultimatum to the claimant to return to work or to establish that she could not do so.

Although the claimant may have subjectively believed she continued to be in real danger at the hands of the student, it

cannot be found, in light of the several measures taken by the employer, that a reasonable person would have abandoned her employment for that reason.

On the whole of the evidence, it cannot be found the claimant has established a compelling reason for leaving the work.

DECISION

The department's determination is affirmed. Benefits are denied as provided therein. The ruling is of no effect.

S.M. Woolf
Administrative Law Judge

Mailed: November 2, 1981

APPENDIX E

The Fourteenth Amendment §1 of the Constitution of the United States provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Ninth Amendment to the Constitution of the United States provides:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Article 6, Clause 2 of the Constitution of the United States provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

California Constitutional Authority:

Article I, §1 of the California Constitution provides:

> "All men are by nature free and independent, and have certain inalienable rights, among which are those enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness and privacy."

Article I, §3 of the California Constitution provides:

> "The State of California is an inseparable part of the American Union, and the Constitution of the United States is the Supreme Law of the Land."

Article I, §13 of the California Constitution provides:

> "...nor be deprived of life, liberty, or property without due process of law..."

The Administrative Procedures Act of 5 USCS §552(b) and Government Code §§6254 and 6255 specifically deal with the non-disclosure of medical and personnel files or information contained therein. This is Government Code Section of the California Public Records Act.

California Unemployment Insurance Code §100 provides:

> "As a guide to the interpretation and application of this division the public policy of this State is declared as follows:
>
> Experience has shown that large numbers of the population of California do not enjoy permanent employment by reason of which their purchasing power is unstable. This is detrimental to the interests of the people of California as a whole.
>
> The benefit to all persons resulting from public and private enterprise is realized in the final consumption of goods and services. It is contrary to public policy to permit the supply of consumption goods and services at prices which do not provide against that harm to the population consequent upon periods of unemployment of those who contribute to the production and distribution of such goods and services.
>
> Experience has shown that private charity and local relief cannot alone prevent the effects of unemployment. Experience has shown that if the State awaits the coming of excessive unemployment it can neither create immediately the organization necessary to orderly, economical and effective relief nor bear the financial burden of relief without disrupting its whole system of ordinary revenues and without jeopardizing its credit.
>
> The Legislature therefore declares that in its considered judgment the

public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used a system of unemployment insurance providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum.

It is the intent of the Legislature that unemployed persons claiming unemployment insurance benefits shall be required to make all reasonable effort to secur employment on their own behalf.

Section 1256 of the California Unemployment Insurance Code provides:

"An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work.

An individual is presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without good cause unless his or her employer has given written notice to the contrary to the department as provided in Section 1327, setting forth facts sufficient to overcome the presumption. The presumption provided by this section is rebuttable.

...."

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APPENDIX F

DECLARATION OF SERVICE BY MAIL

I, MARK E. TAYLOR, declare:

I am over 18 years of age, and not a party to the within cause; I am not a registered California process server; my residence is within San Diego County; and I served a copy of the within Petition for Writ of Certiorari on each of the following, by placing same in an envelope(s) addressed as follows:

Clerk of the Supreme Court
350 McAllister Street
State Building, Room 4250
San Francisco, CA 94102

Hon. John K. Van De Kamp
Attorney General
c/o John Sanders, Deputy Attorney General
3580 Wilshire Boulevard #800
Los Angeles, CA 90010

Thomas B. Day, President
San Diego State University
Administration Building, Room 101
San Diego, CA 92182

The Honorable Edward T. Butler, Judge
c/o Clerk of the Superior Court
220 West Broadway
San Diego, CA 92101

Clerk of the Appellate Court
Fourth Appellate District
Division One
1350 Front Street, Room 6010
San Diego, CA 92101

Each said envelope was then, on October 15, sealed and deposited in the United States mail at San Diego, California, the county in which I reside, with first-class postage thereon fully prepaid.

I certify (declare) under penalty of perjury that the foregoing is true and correct, and this declaration was executed on October 15, 1984, at San Diego, California.

Mark E Taylor
MARK E. TAYLOR